

1 AMENDMENT TO HOUSE BILL 2774

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2774 by replacing  
3 the title with the following:

4 "AN ACT concerning insurance."; and

5 by replacing everything after the enacting clause with the  
6 following:

7 "Section 5. The Illinois Insurance Code is amended by  
8 adding Section 368b as follows:

9 (215 ILCS 5/368b new)

10 Sec. 368b. Prohibition of waiver of requirements and  
11 prohibitions. No contract between an insurer, health  
12 maintenance organization, independent practice association,  
13 or physician hospital organization and a health care  
14 professional or health care provider shall contain any  
15 provision, term, or condition that limits, restricts, or  
16 otherwise waives any of the requirements and prohibitions set  
17 forth in this Article. Any provision purporting to make such  
18 a waiver is void and unenforceable.

19 Section 10. The Health Maintenance Organization Act is  
20 amended by changing Section 5-3 as follows:

1 (215 ILCS 125/5-3) (from Ch. 111 1/2, par. 1411.2)

2 Sec. 5-3. Insurance Code provisions.

3 (a) Health Maintenance Organizations shall be subject to  
4 the provisions of Sections 133, 134, 137, 140, 141.1, 141.2,  
5 141.3, 143, 143c, 147, 148, 149, 151, 152, 153, 154, 154.5,  
6 154.6, 154.7, 154.8, 155.04, 355.2, 356m, 356v, 356w, 356x,  
7 356y, 356z.2, 367i, 368a, 368b, 401, 401.1, 402, 403, 403A,  
8 408, 408.2, 409, 412, 444, and 444.1, paragraph (c) of  
9 subsection (2) of Section 367, and Articles IIA, VIII 1/2,  
10 XII, XII 1/2, XIII, XIII 1/2, XXV, and XXVI of the Illinois  
11 Insurance Code.

12 (b) For purposes of the Illinois Insurance Code, except  
13 for Sections 444 and 444.1 and Articles XIII and XIII 1/2,  
14 Health Maintenance Organizations in the following categories  
15 are deemed to be "domestic companies":

16 (1) a corporation authorized under the Dental  
17 Service Plan Act or the Voluntary Health Services Plans  
18 Act;

19 (2) a corporation organized under the laws of this  
20 State; or

21 (3) a corporation organized under the laws of  
22 another state, 30% or more of the enrollees of which are  
23 residents of this State, except a corporation subject to  
24 substantially the same requirements in its state of  
25 organization as is a "domestic company" under Article  
26 VIII 1/2 of the Illinois Insurance Code.

27 (c) In considering the merger, consolidation, or other  
28 acquisition of control of a Health Maintenance Organization  
29 pursuant to Article VIII 1/2 of the Illinois Insurance Code,

30 (1) the Director shall give primary consideration  
31 to the continuation of benefits to enrollees and the  
32 financial conditions of the acquired Health Maintenance  
33 Organization after the merger, consolidation, or other  
34 acquisition of control takes effect;

1           (2)(i) the criteria specified in subsection (1)(b)  
2 of Section 131.8 of the Illinois Insurance Code shall not  
3 apply and (ii) the Director, in making his determination  
4 with respect to the merger, consolidation, or other  
5 acquisition of control, need not take into account the  
6 effect on competition of the merger, consolidation, or  
7 other acquisition of control;

8           (3) the Director shall have the power to require  
9 the following information:

10           (A) certification by an independent actuary of  
11 the adequacy of the reserves of the Health  
12 Maintenance Organization sought to be acquired;

13           (B) pro forma financial statements reflecting  
14 the combined balance sheets of the acquiring company  
15 and the Health Maintenance Organization sought to be  
16 acquired as of the end of the preceding year and as  
17 of a date 90 days prior to the acquisition, as well  
18 as pro forma financial statements reflecting  
19 projected combined operation for a period of 2  
20 years;

21           (C) a pro forma business plan detailing an  
22 acquiring party's plans with respect to the  
23 operation of the Health Maintenance Organization  
24 sought to be acquired for a period of not less than  
25 3 years; and

26           (D) such other information as the Director  
27 shall require.

28           (d) The provisions of Article VIII 1/2 of the Illinois  
29 Insurance Code and this Section 5-3 shall apply to the sale  
30 by any health maintenance organization of greater than 10% of  
31 its enrollee population (including without limitation the  
32 health maintenance organization's right, title, and interest  
33 in and to its health care certificates).

34           (e) In considering any management contract or service

1 agreement subject to Section 141.1 of the Illinois Insurance  
2 Code, the Director (i) shall, in addition to the criteria  
3 specified in Section 141.2 of the Illinois Insurance Code,  
4 take into account the effect of the management contract or  
5 service agreement on the continuation of benefits to  
6 enrollees and the financial condition of the health  
7 maintenance organization to be managed or serviced, and (ii)  
8 need not take into account the effect of the management  
9 contract or service agreement on competition.

10 (f) Except for small employer groups as defined in the  
11 Small Employer Rating, Renewability and Portability Health  
12 Insurance Act and except for medicare supplement policies as  
13 defined in Section 363 of the Illinois Insurance Code, a  
14 Health Maintenance Organization may by contract agree with a  
15 group or other enrollment unit to effect refunds or charge  
16 additional premiums under the following terms and conditions:

17 (i) the amount of, and other terms and conditions  
18 with respect to, the refund or additional premium are set  
19 forth in the group or enrollment unit contract agreed in  
20 advance of the period for which a refund is to be paid or  
21 additional premium is to be charged (which period shall  
22 not be less than one year); and

23 (ii) the amount of the refund or additional premium  
24 shall not exceed 20% of the Health Maintenance  
25 Organization's profitable or unprofitable experience with  
26 respect to the group or other enrollment unit for the  
27 period (and, for purposes of a refund or additional  
28 premium, the profitable or unprofitable experience shall  
29 be calculated taking into account a pro rata share of the  
30 Health Maintenance Organization's administrative and  
31 marketing expenses, but shall not include any refund to  
32 be made or additional premium to be paid pursuant to this  
33 subsection (f)). The Health Maintenance Organization and  
34 the group or enrollment unit may agree that the

1 profitable or unprofitable experience may be calculated  
2 taking into account the refund period and the immediately  
3 preceding 2 plan years.

4 The Health Maintenance Organization shall include a  
5 statement in the evidence of coverage issued to each enrollee  
6 describing the possibility of a refund or additional premium,  
7 and upon request of any group or enrollment unit, provide to  
8 the group or enrollment unit a description of the method used  
9 to calculate (1) the Health Maintenance Organization's  
10 profitable experience with respect to the group or enrollment  
11 unit and the resulting refund to the group or enrollment unit  
12 or (2) the Health Maintenance Organization's unprofitable  
13 experience with respect to the group or enrollment unit and  
14 the resulting additional premium to be paid by the group or  
15 enrollment unit.

16 In no event shall the Illinois Health Maintenance  
17 Organization Guaranty Association be liable to pay any  
18 contractual obligation of an insolvent organization to pay  
19 any refund authorized under this Section.

20 (Source: P.A. 91-357, eff. 7-29-99; 91-406, eff. 1-1-00;  
21 91-549, eff. 8-14-99; 91-605, eff. 12-14-99; 91-788, eff.  
22 6-9-00; 92-764, eff. 1-1-03.)

23 Section 15. The Voluntary Health Services Plans Act is  
24 amended by changing Section 10 as follows:

25 (215 ILCS 165/10) (from Ch. 32, par. 604)

26 Sec. 10. Application of Insurance Code provisions.  
27 Health services plan corporations and all persons interested  
28 therein or dealing therewith shall be subject to the  
29 provisions of Articles IIA and XII 1/2 and Sections 3.1, 133,  
30 140, 143, 143c, 149, 155.37, 354, 355.2, 356r, 356t, 356u,  
31 356v, 356w, 356x, 356y, 356z.1, 356z.2, 367.2, 368a, 368b,  
32 401, 401.1, 402, 403, 403A, 408, 408.2, and 412, and

1 paragraphs (7) and (15) of Section 367 of the Illinois  
2 Insurance Code.

3 (Source: P.A. 91-406, eff. 1-1-00; 91-549, eff. 8-14-99;  
4 91-605, eff. 12-14-99; 91-788, eff. 6-9-00; 92-130, eff.  
5 7-20-01; 92-440, eff. 8-17-01; 92-651, eff. 7-11-02; 92-764,  
6 eff. 1-1-03.)

7 Section 99. Effective date. This Act takes effect  
8 December 1, 2003."